IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1000 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/p

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

KANTIJI R THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1000 of 1988

MR KAMALNAYAN J. PANCHAL for MR JM PANCHAL for Petitioner No. 1

..... for Petitioner No. 2-5

MR IM PANDYA APP for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 08/08/2002

C.A.V. JUDGEMENT

1. This Appeal preferred from the judgment and order of conviction of the appellants in Sessions Case No.38 of 1988 relates to a group-clash that took place on 29.8.1987 in Village Dehgam at around 09.00 p.m. The appellant No.1, aged 21 at the relevant time, is convicted of the offence under section 307 of the Indian Penal Code ('the IPC' for short) and sentenced to rigorous imprisonment for five years and fine of Rs.500/-, in case of default in payment of which sentenced to further punishment of simple imprisonment for six months. He is also convicted and sentenced for the offences under sections 147, 148 and 149 of the IPC. The appellant No.2 is convicted for the offences under sections 147 and 148 of the IPC and sentenced to three months' rigorous imprisonment and fine of Rs.250/-, in default, one month of simple imprisonment. The appellant Nos.3, 4 and 5 are convicted of the offences under sections 323, 147, 148 and 149 of the IPC and sentenced to three months' rigorous imprisonment and fine of Rs.400/-, in default, fifteen days of simple imprisonment, by the impugned judgment and order dated 29.11.1988.

2. According to the version of the complainant, who was one of the five injured victims of the alleged offence, the appellants had, on 29.8.1987 at 09.00 p.m., assailed the victims with a dharia and sticks along with one another accused No.6 who was alleged to have given blows with a bicycle chain.

2.1 Admittedly, there have been cross cases and in the Sessions Case No.37 of 1988 some of the appellants were the complainants who were also hurt. Again, admittedly, the reason for the group-clash was that the widowed sister (appellant No.5) of the appellant Nos.1 to 4 was scolded by the main victim of the offences for having a bad character. She was living alone in the room adjoining the room of the victims all of whom were living in a line of rooms called Chawl. According to the defence version transpiring from the statement recorded under section 313 of the Code of Criminal Procedure ('the Cr.PC' for short), the victims were harassing her with a view to evicting her from the room as they were interested in that adjoining premises and that widow had in fact had to live away from the premises after the incident.

3. During the course of evidence before the trial Court, important evidence in the form of depositions of Pratapji Ramaji, the complainant, (Exh.12), Medical Officer Dr. Jaybharatiben Yashvantbhai who first

examined the victims (Exh.14), Medical Officer Dr.Jitendrakumar Jethalal to whom Ramaji, the main victim, was referred (Exh.28), Tejiben, wife of the complainant (Exh.36), Shantaben, sister of the complainant (Exh.37) and Ramaji Jivaji, the main victim (Exh.38) as also the depositions of the Investigating Officer and the panchas, who turned hostile, were recorded and the plan of the place of the incident, panchnamas, medical certificates and report of the serological analysis etc. were produced as documentary evidence.

4. According to the submissions of the learned counsel Mr.Kamalnayan J. Panchal appearing for the appellants, the following important aspects and contradictions emerging from the evidence are decisive and lost site of in the otherwise elaborate impugned judgment. It was submitted that not only that all the victims and important witnesses were interested persons but they were also members of the same family living under the same roof, and yet, their depositions contained material contradictions in many respects, particularly with regard to the sequence of events, the weapons used and the injuries alleged to have been inflicted by particular accused. It was also pointed out that the only independent witness admittedly present at the time and who was also allegedly injured, i.e. one Shri Ranjitsinh, was not examined in evidence. It was further submitted that the ocular version of the incident was wholly inconsistent with the medical evidence and the injuries suffered by the appellant-accused remained wholly unexplained even as the appellant No.1 had been taken to hospital even earlier than the victims. It was also pointed out that, surprisingly, blood on all the articles with bloodstains and blood samples of all the victims as well as blood on the dharia recovered subsequently were found to be of the same group. It was on that basis argued that the offences alleged against the appellants were not proved beyond doubt and the appellants were entitled at least to the benefit of doubt.

5. Going through the evidence, in his deposition, the complainant and main witness, namely, Pratapji Ramaji, has deposed that at around 09.00 p.m. on 29.8.1987 upon hearing shouts of his family members, he had rushed to the spot from his nearby pan-shop and he saw that the appellant No.1 struck one blow on the head of his father, namely, Ramaji, and, when his father fell down, two more blows by stick were dealt by Chanaji, the appellant No.3 and Rameshji, the appellant No.4. Upon

his intervention, the appellant No.2 dealt a blow on his head by a stick and, when he put his right hand on the head to save his head from another blow, his thumb was struck. According to him, his wife Tejiben was dealt a blow of stick by appellant No.4 and his sister Shantaben was dealt a blow of stick by appellant No.5. One Ranjitsinh who intervened was also dealt a blow of stick by appellant No.4 and the original accused No.6 struck on the chest of his father by a bicycle chain. The accused left all the weapons at the spot and went away, according to this witness. He claimed ignorance about injuries to the appellants. He further deposed in his cross-examination that they reached the hospital at 10.00 p.m. and dictated his complaint at 10.30 p.m. to the police who had come to the hospital. According to that complaint (Exh.13), the appellant Nos.3 and 4 were hitting his father on the head by sticks when he rushed to the spot after hearing sounds. Several people from the surrounding area had gathered at the spot and the appellants had, therefore, fled from the spot, according to the complaint.

5.1 The depositions of the doctors at Exhs.14 and 28 and the medical certificates at Exhs.15, 16, 17, 18 and 19 go to relate a different story. According to the examining doctor, the complainant himself had suffered two injuries which could have been caused by a sharp instrument and they were not such as could be suffered by a lathi. The lacerated wound as also the wound on the left temple suffered by his father, Ramaji, were such as could have been caused by a dharia while the other injuries of fracture on the left hand-wrist and bleeding of the nose could have been caused by the bicycle chain. Chain blows were dealt on his chest according to the ocular version. According to the certificates issued by her (Exhs.15 to 18), all the injured victims were examined at the same time at 09.15 p.m. on 29.8.1987, whereas, according to the medical certificate at Exh.19, the appellant No.1 was examined at 08.45 p.m. and was found to have incised wound over left temple region which was bone-deep and could have been due to a sharp cutting instrument. The other doctor to whom the complainant and his father were referred by 11.10. p.m. on the same day had not opened the bandages and opined that the condition of Ramaji was not such as could result into his death. The certificates issued were admittedly based only on the medical papers prepared by the treating doctors who were on duty. Thus, at least the appellant No.1 had reached the hospital earlier than the victims with injuries which could have been caused by a dharia; and, according to the deposition of the complainant, the weapons of offence

were left at the spot of the incident. During the course of investigation, blood-stained clothes of the victims were stated to have been recovered vide panchnama at Exh.34 and the dharia and the sticks alleged to have been used in the offences were stated to have been recovered from the house of Chanaji Ranchhodji vide Exh.35. But, when it came to proving such recoveries, the panch witness (Exh.33) turned hostile and categorically denied that the weapons were recovered in presence of the appellants.

5.2 The depositions of the other victims, namely, Tejiben and Shantaben, also contained contradictions in material particulars about the way the incident was alleged to have happened. According to Tejiben (Exh.16), her husband Pratapji had come after her father-in-law had fallen down. According to her, the appellant Nos.3 and 4 had dealt lathi blows to her father-in-law, whereas, Shantaben (Exh.37) did not say anything about such lathi blows by appellant Nos.3 and 4. The main victim, Ramaji (Exh.38), deposed that his son Pratapji was at his house at the time of the incident. He also claimed to have been beaten on his chest with the bicycle chain by the appellant No.6 and specifically stated that none of the assailants were injured during the incident. He admitted that the room and residence of the appellant No.5, the widowed sister of the other appellants, remained closed after the incident.

5.3 Thus, the prosecution suffers from inconsistent statements regarding the sequence of the events, the injuries alleged to have been inflicted by each of the accused, the injuries sustained by the victims, the injuries revealed in the medical examination, the place from where the weapons left were found as also fails to explain the injuries suffered by the appellant No.1. The independent witnesses, though available, have not been examined and there are serious anomalies regarding the timing of the incident; lending credence to the appellants' argument that a version different from what actually happened was sought to be cooked up by the victims with the aid of investigating officers.

5.4 The learned A.P.P. submitted that, although there might be minor inconsistencies about the details of the incident, it was clear that the accused had come to the place of the incident in a group, that they were armed and they had the intention and motive to injure the victims in view of the aspersions cast on the character of the widowed sister of the main accused. He further submitted that there was no grave and sudden provocation

which could have resulted in the group-clash and, therefore, the conviction of the appellants was not required to be interfered.

6. As held by the Division Bench of this Court in STATE OF GUJARAT v. MAFAJI TALAJI [1980 GLR 765], the conduct of the witnesses who have denied injuries on the accused also justifies an interference to the effect that the witnesses were lying on the most material part and, therefore, their evidence was unreliable and if the defence version explains the circumstances, it would throw doubt on the prosecution case. It is also observed that the Court is not permitted to reconstruct a case for the prosecution. Defence has not to explain as to in what circumstances, when and where the said injuries to the victims were caused, but it is for the prosecution to prove the injuries caused to them by the accused at the time and place relied upon by the prosecution and none else and at no other time and place. It is also held by the Supreme Court in SHIV KARAN AND ANOTHER v. STATE OF RAJASTHAN [1998 SCC (Cri.) 712] that absence of any explanation offered for the injuries sustained by the accused made the prosecution case suspect and entitled the appellants to the benefit of reasonable doubt. It is also held by the Supreme Court in STATE OF RAJASTHAN v. RAJENDRA SINGH [1998 SCC (Cri.) 1605] that, where contradictions created a serious doubt about the truthfulness of the witnesses and the injuries on the accused were not explained, it could be inferred that the witnesses were not giving the true version and trying to suppress the part played by some of them. The Court would be justified in not placing reliance on such evidence.

6.1 The judgment of the Supreme Court in STATE OF U.P. v. KAPILDEO SINGH AND OTHERS [1999 SCC (Cri.) 567], was relied upon to submit that, where the evidence of the injured witnesses was inconsistent with the medical evidence and there was no other evidence connecting the accused with the crime, the accused were required to be acquitted. The judgment in STATE OF HARYANA v. LAKHBIR SINGH [AIR 1990 SC 2154] was relied upon for the proposition that where the entire version of the prosecution and the evidence of the eye-witnesses was in conflict with the medical evidence, acquittal was required to be upheld. RAM KUMAR AND ANOTHER v. STATE OF HARYANA [AIR 1998 SC 1437] was relied upon to submit that when witnesses examined by the prosecution were interested witnesses and their evidence was not reliable, non-examination of independent witnesses, though available, justified the possibility that the complainant

party attacked the accused first and the accused exercised the right of private defence.

7. Examining the above factual and legal aspects of the matter, it is clear that there are material contradictions and inconsistencies in the version of the events related by different interested witnesses and the ocular version is not wholly borne out by the medical evidence. The injuries suffered by the accused, who reached the hospital first, not only remained wholly unexplained but the victims and the witnesses claimed total ignorance about them. That detracts from the trustworthiness of the witnesses. And, the charge under section 307 of the IPC is refuted by the medical evidence. These aspects are lost sight of in the impugned judgment. There are sufficient reasons to believe that the version sought to be proved by the prosecution was different from how the incident could have actually happened. Therefore, the appellants were entitled at least to the benefit of doubt. The appellants have, during the trial and after the conviction, remained on bail. In these facts and circumstances, the appeal is allowed, the impugned judgment and order of sentence are set aside and the appellants are acquitted giving them the benefit of doubt. The bail bond executed by the appellants at the time of granting the bail shall stand discharged.

(D.H.WAGHELA,J.)

(KMG Thilake)